



**THE STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

21 SOUTH FRUIT STREET SUITE 14  
CONCORD, NEW HAMPSHIRE 03301

Christopher R. Nicolopoulos  
Commissioner

Alexander K. Feldvebel  
Deputy Commissioner

November 24, 2020

Susan Kee  
Vice President and Deputy General Counsel  
Health Plan Holdings, Inc.  
705 Mt. Auburn Street  
Watertown, MA 02472  
[susan\\_kee@tufts-health.com](mailto:susan_kee@tufts-health.com)

James V. Hatem  
Nixon Peabody LLP  
900 Elm Street  
Manchester, NH 03101  
[jhatem@nixonpeabody.com](mailto:jhatem@nixonpeabody.com)

Re: Form E Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer (the "Form E Notification") Submitted by Health Plan Holdings, Inc. ("Health Plan Holdings") with respect to Harvard Pilgrim Health Care of New England, Inc. ("HPNE") and HPHC Insurance Company, Inc. ("HPIC")

Dear Ms. Kee and Mr. Hatem:

The Applicant Health Plan Holdings (formerly known as Tufts Health Plan, Inc.) submitted this Form E Notification on October 19, 2020 in connection with its proposed acquisition of control of Harvard Pilgrim Health Care, Inc. ("HPHC"), including HPHC's subsidiaries HPNE and HPIC (the "Health Plan Holdings/HPHC Combination").

The Form E Notification is expressly premised upon the closing of the acquisition of Tufts Health Freedom Insurance Company ("THFIC"), currently a wholly-owned indirect subsidiary of Health Plan Holdings, by UnitedHealth Group Incorporated ("UHG") and United HealthCare Services, Inc. ("UHS") (the "UH/THFIC Acquisition"). The UH/THFIC Acquisition was the subject of a Form A Statement filed with the Insurance Department on October 5, 2020 (Department Docket No. Ins 20-076-AP). That Form A Statement stated that it was the intention of the parties that the UH/THFIC Acquisition close immediately prior to the closing of the Health Plan Holdings/HPHC Combination, and the Stock Purchase Agreement submitted with the Form A Statement reflected that intent by providing that regulatory clearance and satisfaction or waiver of closing conditions to the Health Plan Holdings/HPHC Combination is a condition to the closing of the UH/THFIC Acquisition. The Health Plan Holdings/HPHC Combination is the subject of a Form A Statement filed with the Massachusetts Division of Insurance on November 16, 2020.

On October 28, 2020, the Applicant agreed to toll the 30 day period of RSA 401-B:3-a, III until a decision concerning the UH/THFIC Acquisition.

The UH/THFIC Acquisition was approved by the Insurance Commissioner by Order issued on November 18, 2020 in Department Docket No. Ins 20-076-AP.

As the Form E Notification is premised upon the closing of the UH/THFIC Acquisition, the market and market share data provided by the Applicant in the Form E Notification does not include any information respecting the direct written premiums and market shares of THFIC. The Form E Notification assumes that the UH/THFIC Acquisition will close before the Health Plan Holdings/HPHC Combination, so that the Health Plan Holdings/HPHC Combination will not involve the former THFIC New Hampshire business. The Applicant requests in the Form E Notification that the Commissioner's "no-action approval" of the Form E Notification be conditioned on the closing of the UH/THFIC Acquisition.

Assuming that the UH/THFIC Acquisition will close before the Health Plan Holdings/HPHC Combination, it is reasonable to exclude the present THFIC business from the Form E Notification and the Department's review with respect to the Health Plan Holdings/HPHC Combination. In light of the plans set forth in the UH/THFIC Form A Statement and the Form E Notification, and the Applicant's request that any approval be conditioned on the closing of the UH/THFIC Acquisition, the Commissioner has reviewed the Form E Notification for the proposed Health Plan Holdings/HPHC Combination as presented, without regard to THFIC business in New Hampshire. The Commissioner is not presented with, and does not address, any Health Plan Holdings/HPHC combination that would include the former THFIC business. Any such combination would require a new Form E Notification.

The only insurer (other than THFIC) affiliated with Health Plan Holdings that is licensed in New Hampshire is Tufts Insurance Company ("TIC"), a Massachusetts-domiciled insurer subsidiary of Health Plan Holdings licensed as a life, accident and health insurer in New Hampshire. The only insurance companies or health maintenance organizations affiliated with HPHC that are licensed in New Hampshire are HPNE, licensed as a health maintenance organization in New Hampshire, and HPIC, licensed as an accident and health insurer in New Hampshire.

The direct written premium and market share data provided in the Form E Notification shows that, excluding *de minimis* sales of Medicare related products, TIC has no direct written premium in New Hampshire. TIC has no direct written premium in and no share of the Individual, Small Group, Large Group or All Comprehensive health insurance markets in New Hampshire. The Health Plan Holdings/HPHC Combination will not increase the market share in any market. The HPHC business will merely become part of the combined Health Plan Holdings/HPHC group, which will have no other pre-existing market shares in New Hampshire (given the UH/THFIC Acquisition). As there will be no increase in any market share as an immediate result of the Health Plan Holdings/HPHC Combination, the Combination falls within the exemption of RSA 401-B:3-a, II(b)(4)(B).

In these circumstances, the Commissioner concludes that the Health Plan Holdings/HPHC Combination as described in the Form E Notification does not violate the standards of RSA 401-B:3-a. The waiting period under the statute is accordingly terminated. As discussed above, this conclusion assumes that the UH/THFIC Acquisition will close before the Health Plan Holdings/HPHC Combination. The Commissioner's non-objection is accordingly conditioned upon (1) the approval of the Massachusetts Commissioner of Insurance

of the Health Plan Holdings/HPHC Combination, and (2) the closing of the UH/THFIC Acquisition occurring before the closing of the Health Plan Holdings/HPHC Combination.

Very truly yours,

A handwritten signature in blue ink, appearing to read "T. Hughes", is written over a horizontal line.

cc: Tisa K. Hughes, Chief Legal Officer, Harvard Pilgrim Health Care, Inc.